MASSACHUSETTS DEPARTMENT
OF
TELECOMMUNICATIONS AND ENERGY

Rulemaking, pursuant to G.L. c. 164, and c. 25,)

to establish rules governing the unbundling of services) D.T.E. 98-32-E

related to the provision of natural gas)

REPLY COMMENTS OF RELIANT ENERGY RETAIL, INC.

Reliant Energy Retail, Inc. (Reliant Energy) hereby submits the following reply comments regarding the "Petition for Adoption of Regulations" (Petition) collectively filed on November 3, 1999 by the ten Massachusetts gas local distribution companies (LDCs).

REPLY COMMENTS

Reliant Energy is an active participant in the Massachusetts retail gas market. It serves both residential and non-residential retail customers in Massachusetts. Reliant Energy submitted detailed initial comments on the proposed gas unbundling regulations, and urges the Department to condition its approval of the regulations in a manner consistent with those initial comments.

Reliant Energy has since received and reviewed the initial comments filed by AIM, the Attorney General, and the Low-Income Utility Weatherization and Fuel Assistance Network (LIN), and offers the following reply comments.

Attorney General's Initial Comments

The Attorney General takes issue with one aspect of the draft regulations: the notice of termination requirement in Section **.04(3)(e). This provision reads:

(e) A Supplier must notify a Retail Customer of termination of Supplier Service at least ten days before termination, when such termination is due to reasons other than breach of contract. Such notice must be in writing, addressed to the Retail Customer's billing address, and mailed first-class.

The Attorney General complains about the qualifier in the provision: "when such termination is due to reasons other than breach of contract," arguing that non-residential customers should get 10 days notice before termination, regardless of the reason for the termination. The Attorney General also faults this qualifying language for referring to "breach of contract" (which the Attorney General claims is too subjective and has no business purpose), rather than "non-payment" (the word used in the electric unbundling regulations). The solution to this "problem," according to the Attorney General, is to strike the qualifier in its entirety, such that Suppliers are always required to give 10 days notice of termination, for whatever reason.[(1)]

Reliant Energy opposes the Attorney General's explicit suggestion that the qualifying language be stricken, as well as its implicit suggestion that the qualifying language be modified to refer to "non-payment." As currently proposed, the regulation is already too restrictive: by requiring Suppliers to give a minimum of 10 days notice of termination for all events that do not constitute a breach of contract (for example, at the scheduled expiration of the term of the contract), the restriction arguably precludes Suppliers and non-residential consumers from entering into short-term transactions (*e.g.*, for balancing, peaking, temporary or emergency supply purposes), and imposes a needless administrative burden on Suppliers, particularly in cases where the supplier and the customer may have agreed that a contract will expire on a date certain without any further action by either party.

Expanding the notice requirement as suggested by the Attorney General, then, is even more inappropriate. The DTE should realize that, unlike contracts for residential customers, contracts with commercial and industrial customers are likely to entail a high degree of customization, including numerous material non-price terms and conditions,[(2)] and, as such, these customers often will have a number of different ways, unrelated to the payment of their bills, to breach their contracts.

The Attorney General's proposed revision would render Suppliers helpless to take quick action against non-residential customers who breached critical, non-price components of their supply contracts (for example, a customer who agreed, but failed, to cut back on gas takes when asked) and, therefore, would dissuade Suppliers from offering such non-price contract features, even when such features might otherwise be demanded by the market. There is no defensible policy purpose for impairing contracting flexibility within the non-residential retail market in this way.

AIM's Initial Comments

AIM raises a very-narrow issue: the applicability of the 3-day recission period for newly-signed customers. As drafted, the regulation grants to all retail customers, except those with an annual load greater than 5,000 therms (presumed to be mid-sized and larger C&I customers), a 3-day right to rescind new supplier contracts. AIM states (without any explanation) that on Boston Gas's system, this protected customer class is defined by a 7,000 therm threshold, and asks that the regulations should be redrafted to recognize this.

Reliant Energy is unable to discern from AIM's comments why the "protected class" of small customers on Boston Gas' system should be defined by an annual usage figure that is 40% higher than the usage of the same class of customers on all other Massachusetts LDCS. Assuming, however, that the 7,000 therm threshold is indeed rational and defensible, Reliant Energy requests that the DTE, if it is inclined to modify the threshold specified in the regulations, only grant a special, higher threshold for Boston Gas customers, and not increase the threshold to 7,000 therms for the customers on all of the other LDCs.

Low Income Network's Initial Comments

Reliant Energy notes that the initial comments of the Low Income Network are, for the most part, a generalized indictment of the unbundling process, and that LIN is seeking relief -- such as the implementation of low-income subsidies and mandatory conservation programs -- that is unrelated to the proposed regulations. With respect to the draft regulations specifically, LIN alleges that the regulations are "diluted" and that they should be modified to mirror all of the consumer-protection aspects of the DTE's electric regulations, as well as some general policy pronouncements made in associated court cases dealing with the electric unbundling legislation.

As the DTE is aware, the proposed regulations are a near carbon copy of the electric unbundling regulations already on the books. To the extent, then, that LIN opposes these draft regulations, LIN appears to be making an untimely collateral attack on the electric regulations.

Third-party gas suppliers are not monopolists like the electric utilities and should not be regulated as such. The proposed gas unbundling regulations already subject Suppliers to many of the existing regulatory provisions governing the LDCs in their provision of gas service. Further direct regulation of non-jurisdictional gas marketers, particularly the price regulation suggested by LIN, is not appropriate.

CONCLUSION

In its initial comments, Reliant Energy recommended a number of revisions and clarifications to the proposed gas unbundling that are necessary to ensure that the regulations meet the needs of Massachusetts' existing retail gas markets, particularly the fledgling residential market. The Department should adopt those recommendations, and, further, condition its approval of the proposed regulations in a manner consistent with Reliant Energy's reply comments outlined above.

Respectfully submitted,

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1. Although the Attorney General does not request this relief, it implies that changing the qualifier to refer to "non-payment," instead of "breach of contract" would be an acceptable fall-back position.

2. Non-residential contracts can be as varied as the market demands. A supply contract with an industrial customer may contain, for instance, (i) minimum take or stated flow-rate requirements, (ii) curtailment or take-reduction requirements that are linked to price or market conditions, or (iii) penalty reimbursement requirements. Similarly, these contracts may be part of a larger plant conversion deal, and thus may be tied to equipment or other asset purchases.